

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

JUL 18 2006

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY

DEPUTY CLERK

ROARK & HARDEE L.P. d/b/a §  
THE WAREHOUSE SALOON AND §  
BILLIARDS, BILL HARDEE, 219 L.P. d/b/a §  
219 WEST, PAUL SILVER, DEI GRATIA, §  
INC. d/b/a THE ELYSIUM, JOHN §  
WICKHAM, PUB DRAUGHT, INC. d/b/a §  
LOVEJOYS TAP ROOM AND BREWERY, §  
JOSEPH (CHIP) TAIT, BEERLAND, §  
RANDALL STOCKTON, TENNIA B. §  
BROWN d/b/a HORSESHOE LOUNGE, GMC §  
INVESTMENT, INC. d/b/a EGO'S, CANARY §  
ROOST, INC., CANARY HUT, INC., GAIL §  
E. JOHNSON, SHEENA SEMMLER, §  
JANET BUDMAN, KEEP AUSTIN FREE §  
PAC, TONY SIRGO, and EDWARD CHECK, §  
§  
v. §  
§  
CITY OF AUSTIN §

CASE NO. A-05-CA-837 SS

**CITY OF AUSTIN'S AMENDED LIST OF EXHIBITS**

TO THE HONORABLE SAM SPARKS, UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant City of Austin and files this amended list of Trial Exhibits.

Defendant reserves the right to amend based on plaintiffs' disclosure of witnesses and exhibits.

**EXHIBITS**

**CITY PRELIMINARY INJUNCTION HEARING EXHIBITS:**

The following exhibits will be offered into evidence:

1. Ex. A-1 October 30, 2003 Smoking Ordinance No. 031030-35
2. Ex. A-2 April 2004 Ord. 040422-31, amending Ordinance No. 031030-35
3. Ex. A-3 October 23, 2003 Smoking Ordinance No. 031023-11 (Re-codification)
4. Ex. A-4 June 2003 Smoking Ordinance No. 030605-17
5. Ex. A-5 July 2003 Amendment to Smoking Ordinance No. 030717-97
6. Ex. A-6 Jan. 2003 Resolution 030130-74
7. Ex. A-7 1996 Smoking Ordinance No. 960418-K

- 8. Ex. A-8 1994 Smoking Ordinance No. 940217-D
- 9. Ex. A-9 1986 Smoking Ordinance No. 860116-I
- 10. Ex. A-10 1977 Smoking Ordinance No. 77-0407-I

**CITY'S RESPONSE TO TEMPORARY RESTRAINING ORDER**

The following exhibits will only be offered into evidence if needed:

- 11. Exhibit "A" Austin City Charter, Article IV §1
- 12. Exhibit "B" 53 Morbidity & Mortality Weekly Report (MMWR), Nov. 12, 2004.
- 13. Exhibit "C" Affidavit of David Lurie, Director, City of Austin Health & Human Services Department.
- 14. Exhibit "D" Sections 2-2-3 and 2-2-7 of the City Code referenced in Part 2 of the current ordinance.

**EXHIBITS "1" and "6" TO PLAINTIFFS' ORIGINAL PETITION AND  
EXHIBITS "A" THROUGH EXHIBIT "U" to STIPULATIONS OF THE PARTIES**

The following exhibits will be offered into evidence:

- 15. Exhibit "1" - City of Austin Smoking Ordinance that became effective September 1, 2005, attached as Exhibit "1" to Plaintiffs' Original Petition
- 16. Exhibit "6" - City of Austin Smoking Ordinance that became effective on or before May 4, 2004, attached as Exhibit "6" to Plaintiffs' Original Petition
- 17. Exhibit "A" - Article XII of the Austin City Charter
- 18. Exhibit "B" - Chapter 1-1, General Provisions of the Austin City Code
- 19. Exhibit "C" - HHSD document entitled, "Smoking in Public Places Ordinance No. 050303-05 Frequently Asked Questions"
- 20. Smoking ordinance enforcement guidelines sent to plaintiffs in March of 2006, titled "Smoking in Public Places Ordinance" and "SIPPO Enforcement Guidelines." Attached as part of Exhibit C to "Defendant City of Austin's Motion for Summary Judgment."
- 21. Amended Frequently Asked Questions on the HHSD website, which was revised to incorporate the amended guidelines that were issued in March of 2006.
- 22. U.S. Surgeon General's Report, "The Health Consequences of Involuntary Exposure to Tobacco Smoke" (2006). Defendant expects to submit the executive summary, as well as excerpts from the 700 page report.
- 23. Waring, Michael S. and Jeffrey A. Siegel, "An Evaluation of the Indoor Air Quality in Bars before and after a Smoking Ban in Austin, Texas," approved for publication in Journal of Exposure Science and Environmental Epidemiology (2006), which is a peer-reviewed journal.
- 24. Waring, Michael S., Jeffrey A. Siegel and Phillip Huang, "An Evaluation of a Smoking Ban Ordinance in Bars in Austin, Texas," peer-reviewed and presented by Dr. Siegel at Healthy Buildings Conference in Lisbon, Portugal (June 2006).

The following exhibits will only be offered into evidence if needed:

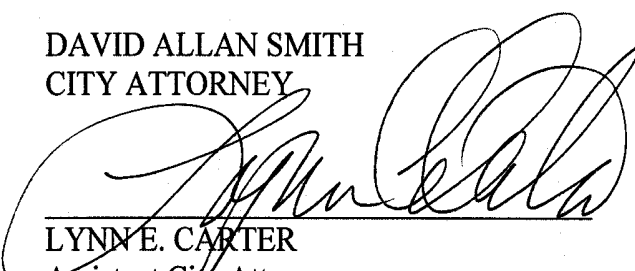
25. SIPPO Activity Updates for January 23, 2006; January 30, 2006; February 6, 2006; February 21, 2006; March 2, 2006; March 6, 2006; and March 13, 2006; March 20, 2006; March 27, 2006; April 3, 2006; April 10, 2006; April 17, 2006; April 24, 2006; May 1, 2006; May 8, 2006; May 15, 2006; May 15, 2006; May 22, 2006; May 29, 2006; June 5, 2006; June 12, 2006; June 19, 2006; June 26, 2006; July 3, 2006; July 10, 2006; and July 17, 2006.
26. Plea Agreements by owner/operator of Rackdaddy's and attorney, Marc Levin.
27. Plea Agreements by Mickey Leathers, owner/operator of Mickey's Thirsty I Lounge and attorney, Marc Levin.
28. Exhibit "F" - "Application for a Smoking Establishment Permit" for Warehouse Saloon and Billiards signed by Bill Hardee on March 25, 2004
29. Exhibit "G" - Receipt to Warehouse Saloon & Billiards; \$300.00 unrestricted permit
30. Exhibit "I" - Receipt to Ego's; \$300.00 unrestricted permit
31. Exhibit "J" - "Application for a Smoking Establishment Permit" for the Canary Hut Pub signed by Gail E. Johnson on April 15, 2004
32. Exhibit "K" - "Permit to Operate a Smoking Establishment" for the Canary Hut Pub, located at 11005 Burnet Road, Suites 108 and 110, in Austin, Texas
33. Exhibit "K" - Receipt to Canary Hut Pub; \$300.00 unrestricted permit
34. Exhibit "L" - "Application for a Smoking Establishment Permit" for The Canary Roost signed by Gail E. Johnson on April 15, 2004
35. Exhibit "M" - "Permit to Operate a Smoking Establishment" for The Canary Roost, located at 11900 Metric Boulevard, Suite D, in Austin, Texas
36. Exhibit "M" - Receipt to Canary Roost; \$300.00 unrestricted permit
37. Exhibit "N" - "Application for a Smoking Establishment Permit" for 219 West signed by Paul Silver on March 10, 2004
38. Exhibit "O" - "Permit to Operate a Smoking Establishment" for 219 West, located at 219 W. 4<sup>th</sup> Street in Austin, Texas and receipt to 219 West; \$300.00 unrestricted permit
39. Exhibit "S" - "Permit to Operate a Smoking Establishment" for Love Joys Taproom, located at 604 Neches in Austin, Texas and receipt to Love Joys Taproom; \$300.00 unrestricted permit
40. City of Austin's Interrogatories to Plaintiff Keep Austin Free
41. City of Austin's Requests for Production to Plaintiff Keep Austin Free

The City also includes by reference herein all exhibits that were admitted as evidence in the Preliminary Injunction Hearing, and specifically include Defendants' exhibits 1-12, 14, 18-36 and 38, a copy of which was provided to plaintiffs at the hearing. The City also reserves the right to mark its discovery requests to plaintiffs and plaintiffs' responses to discovery requests as

exhibits to impeach plaintiffs' witnesses or to support any objection during the trial. The City incorporates and designates all evidence that is identified by Plaintiffs, but reserves its objections to same. Finally, the City reserves the right to remark its exhibits in compliance with the court's preference so as to incorporate the preliminary injunction hearing exhibits, as well as the exhibits listed herein.

RESPECTFULLY SUBMITTED,

DAVID ALLAN SMITH  
CITY ATTORNEY

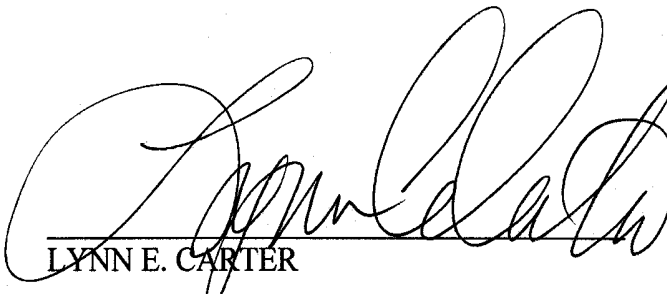


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ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 18th day of July, 2006.

(Via Facsimile (512) 469-7480)  
Marc A. Levin  
Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701



LYNN E. CARTER